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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,460	03/11/2004	Erica Louise Evans	CM2731	6115
27752 7590 01/03/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION WINTON HILL BUSINESS CENTER - BOX 161 6110 CENTER HILL AVENUE CINCINNATI, OH 45224			EXAMINER YU, GINA C	
			ART UNIT 1617	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/03/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/798,460	Applicant(s) EVANS ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 3, 2006 has been entered.

Claim Objections

Claims 1 and 12 are objected to because of the following informalities: in claim 1 (d), line 4 and claim 12 (d), line 4, it is viewed that removing the unnecessary box brackets would better clarify the limitation of the Markush language. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 18 recites a limitation "greater than about 10 % by weight of the composition of glycerine". What range is covered by "greater than about 10" is unclear because the term "about 10" itself covers the number which is greater or less than 10.

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The phrase denotes a limitation within a limitation, and the metes and bounds of the scope of the limitation is unclear.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7-15, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda et al. (US 2002/0041889 A1) in view of Oblong et al. (US 6217888 B1).

Masuda et al. teach a topical preparation comprising 6 % of 1,3-butylene glycol, 4 % of glycerine, DL-serine, and N,N,N-trimethylglycine (a zwitterionic moisturizing factor). See Preparation Example 3; instant claims 1, 7, 12, and 13. The preparation example contains 0.1 % by weight of DL-serine, which is within the claimed limitation of instant claim 5. See also Example 10 and 11. The reference teaches the thickening agents of instant claims 10 and 11, which include polyacrylamide, polyacrylate, and sodium polyacrylate. See [0044]. Example 6 illustrates a toilet water formulation comprising 0.2 % of a thickening agent, methylcellulose. See instant claim 9. The reference also teaches making compositions in the form of emulsion, lotion or cream. See [0054], Examples. Example 8 teaches a cleansing foam comprising 10 % of glycerine, which meets the glycerine weight limitation of instant claims 1 (a), 12 (a), and 18.

In claims 13, 14(a), 12, with respect to weight limitations on glycerine, there appears to be no criticality in modifying the weight amount of the glycol as required by

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the present claims. As discussed above, the reference teaches formulations which contain both 4 % glycerine and 6% 1,3-butylene glycol, as well as a formulation which contains 10 % of glycerine alone. Since glycerine and 1,3-butylene glycol are art-recognized functional equivalents that are added or substituted in place of the other, it is viewed that a skilled artisan would have discovered an optimum weight amount of these glycols to render desired humectancy by routine experimentations.

Masuda et al. also teach using medicinal ingredients including vitamin B₃, including benzyl nicotinate, nicotinamide, and dl-alpha-tocopheryl nicotinate. While Masuda et al. broadly teach making a cosmetic composition by combining the components of the presently claimed invention, the reference does not provide a specific motivation to select the vitamin B₃ compounds among the disclosed medicinal ingredients.

Oblong et al. teach that vitamin B₃ compound, particularly nicotinamide, is useful in regulating skin conditions such as the signs of skin aging and improving the skin texture. See col. 1, line 59 – col. 2, line 9; col. 3, line 17 – col. 4, line 44. The reference also teaches using nicotinic acid, tocopherol nicotinate, and inositol hexanicotinate, or mixtures thereof, in the most preferred amount of about 2-5 % by weight. See col. 4, line 44 – col. 6, line 57: instant claims 2, 3, and 12. The reference also teaches that preferred carriers for the invention include oil-in-water emulsion and water-in-silicone emulsions. See col. 7, line 59 – col. 10, line 58. See instant claim 8. Oblong et al. also teach using humectants, such as glycerine, to up to 20 % by weight, meeting instant claim 15. See col. 18, lines 1-29.

It would have been obvious to one of ordinary skill in the art at the time the present invention was made to have modified the exemplified cosmetic compositions of Masuda et al. by incorporating to the compositions a vitamin B₃ compound as motivated by Oblong et al. because i) Masuda et al. teach adding vitamin B₃ compounds as a cosmetic additive; and ii) Oblong et al. teach that vitamin B₃ reduces the signs of skin aging and improves the skin texture. The skilled artisan would have had a reasonable expectation of successfully producing a stable and improved cosmetic composition for moisturizing and treating aging skin because both Masuda et al. and Oblong et al. compositions are directed to compatible formulations such as emulsions, cream, and lotion.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masuda et al. and Oblong et al., as applied to claims 1-5, 7-15, 17, and 18 as above, and further in view of Cooke et al. (WO 92/19216).

Masuda et al. and Oblong et al. do not specifically teach using glycerine to the weight amount as required by instant claim 16. Both references, however, teach to make various formulations including gel systems, which would have motivated the skilled artisan to look to a specific disclosure for enablement of making such formulations. See Masuda, [0055]; Oblong, col. 7, lines 16-27.

Cooke et al. teach an aqueous gel formulation for skin or hair care, which comprises 0.5-20 % by weight of glycerine, or 0.5-30 % by weight of a polyhydric alcohol humectant, along with the ingredients which form and stabilize the aqueous gel. See p. 2 and 6. The reference further teaches adding panthenol (vitamin B5)

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moisturizer and vitamin B complex. See p. 5, 2nd full par. The gel formulation is said to provide improved skin feel and skin care benefits, reduced tack and residue characteristics, visual clarity, moisturizing, rub-in and absorption characteristics. See abstract.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of the combined references by formulating the aqueous gel with high glycerine content, as motivated by Cooke et al., because (a) both Masuda et al. and Oblong et al. generally teach making skin care gel system and adding vitamin B to the compositions; and (b) Cooke teaches a specific formulation and enabling disclosure to make the aqueous gel. The skilled artisan would have had a reasonable expectation of successfully producing a stable aqueous gel with enhanced moisturizing and skin benefits.

Response to Arguments

Applicant's arguments with respect to claims 1-5 and 7-18 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 571-272-8605. The examiner can normally be reached on Monday through Friday, from 8:00AM until 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gina C. Yu
Patent Examiner